IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 393 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ORIENTAL FIRE & GENERAL INSURANCE COMPANY LTD. - Appellant(s)
Versus
RAMESHBHAI LALLUBHAI LIMBACHIYA & 1 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,MR SHALIN N MEHTA for Appellant(s) : 1,
SERVED BY AFFIX.-(R) for Defendant(s) : 1,
None for Defendant(s) : 2,
RULE SERVED for Defendant(s) : 2.2.1, 2.2.2,2.2.3

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 17/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident claims Tribunal(Auxi.), Sabarkantha at Himatnagar passed in M.A.C.P. No. 490 of 1985 dated 30th July, 1987.

2.0 The brief facts of the case are that on 27.11.1984, when the present opponent No.1 was proceeding on a motor-cycle as a pillion rider

driven by one Babubhai, the said motor-cycle met with an accident. On account of the said accident, driver of the vehicle Babubhai lost his life and opponent No.1 sustained serious bodily injuries. Therefore, he filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought to have held that since the insurance policy of the vehicle in question does not include risk of the pillion rider, the appellant cannot be said to be liable to satisfy the claim. He has further submitted that the Tribunal has committed an error in holding that premium of Rs.48/- was charged for liability to the public risk including passenger

like pillion rider. In support of his case learned Advocate for the appellant has placed reliance on the following judgments,

1. ***"K. Velunni and Others Vs. Premalatha and Others"*** reported in 1989 ACJ 833,

2. ***"Jam Shri Satji Digvijaysingji and Ors. Vs. Daud Taiyab and Ors."*** reported in 1978 GLR (19) 405,

3. ***"Ambaben Wd./o. Manilal Jivabhai Chauhan & Ors. Vs. Usmanbhai Amirmiya Sheikh & Ors."*** reported in 1978 GLR (19) 913.

4.0 Heard, learned Advocate for the appellant. Though, served none appears on behalf of the opponents. By passing the impugned judgment and award, the Tribunal awarded an amount of Rs.32,000/ with interest at the rate of

10 per cent from the date of application till realization.

4.1 Before proceeding with the matter it would be relevant to refer to a decision of the Apex Court in the case of ***"K. Velunni and Others Vs. Premalatha and Others"*** reported in 1989 ACJ 833 wherein at Para-21 it was held as under,

> "**21.** The apportionment of the compensation in the case of legal representatives of Mohandas is clearly contrary to law. The Tribunal should have held that it is a case of joint and several liability. We are of opinion that in the interest of justice we should rectify the error committed even without an appeal or cross-objection. We have already indicated that a contention that driver, owner and the insurer of the stage carriage bus are liable for the entire compensation has been taken in M.F.A. No.601 of 1983. We, therefore, set aside the direction of the Tribunal that the compensation due to the legal representatives of Mohandas is payable in moietites by the owner of the motor cycle on the one hand and by the driver, owner and insurer of the stage carriage bus on the other. There shall be a decree jointly and severally against all these persons."

4.2 In another decision of this Court passed in ***"Jam Shri Satji Digvijaysingji and Ors. Vs. Daud Taiyab and Ors."*** reported in 1978 GLR (19) 405 would also be relevant to refer, wherein at Para-28 it was held as under,

> "**28.** Thereafter the question was considered as to the extent of Rs.15,000/- by covering even such passenger risk which was not required to be covered by the mandatory requirements of sec.95 by charging the extra premium. To that extent the Insurance Company was, therefore, held liable because of this special contractual clause by giving a wider coverage. Their Lordships, however, pointed out at page 1747 that even these policy clauses would indicate that what was intended to be covered under clause 1 and 1(a) was only the risk required to be covered under sec.95 of the Motor Vehicles Act which restricted the legal liability only to the statutory requirement under sec.95. Therefore, the Act policies satisfying only the requirements of sec.95 would cover passenger risk only in respect of the passengers who were carried for hire or reward or by reason of or in pursuance of a contract of employment. The Act policy would not cover the risk of a passenger carried in a vehicle who was not carried for hire or reward or by reason of or in pursuance of a contract of employment in view of this finally concluded position."

4.3 On perusal of the policy (Exh.-42)of the vehicle involved in the alleged accident and owned by the deceased Babubhai, it clearly transpires that there is a Schedule of Premium in which there are two columns named “A” and “B” which shows that the deceased Babubhai had not paid premium for own damage. However, he had paid the premium for liability to public risk mentioned in column “B”. Hence, it appears that, since no amount is shown against sub-paras 9 for 'pillion passengers' or for 'passengers in side car', it can reasonably be said that the said premium had been taken for only third person passing on the road. Hence, the Tribunal has committed an error by holding that the appellant-insurance company is liable to satisfy the claim.

4.4 Therefore, taking into consideration the principle laid down in the decisions mentioned above as well as documents produced on record, I

am of the opinion that the direction of the Tribunal holding appellant-Insurance Company liable to satisfy the claim in question, requires to be reversed.

5.0 In the result, the appeal is allowed. The direction of the Tribunal holding the appellant-Insurance Company liable to satisfy the claim in question, is quashed and set aside. The judgment and award of the Motor Accident claims Tribunal(Auxi.), Sabar Kantha at Himatnagar passed in M.A.C.P. No. 490 of 1985 dated 30th July, 1987 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. It shall be open to the present opponent No.1-original claimant to recover the amount in question from present opponent Nos. 2, 2.1, 2.2, 2.3. No order as to costs.

(K.S. Jhaveri,J.)

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